



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No.: 220224-0057]**

**RIN 0648-BL06**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions;  
Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework  
Adjustment 9**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This action proposes to approve and implement Framework Adjustment 9 to the Atlantic Herring Fishery Management Plan. This proposed rule would establish a rebuilding plan for herring, adjust accountability measure catch threshold triggers when catch exceeds a herring annual catch limit or management area sub-annual catch limit, and revise existing regulations to clarify area closure and possession limit restrictions and add prohibitions that were inadvertently omitted from previous management actions. This action is necessary to respond to updated scientific information and to achieve the goals and objectives of the fishery management plan. The proposed measures are intended to help prevent overfishing, rebuild the overfished herring stock, achieve optimum yield, and ensure that management measures are based on the best scientific information available.

**DATES:** Public comments must be received by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2022-0021, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0021 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of Framework 9, including the Environmental Assessment (EA) and the Regulatory Impact Review (RIR) prepared by the New England Fishery Management Council in support of this action are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the Internet at <https://www.nefmc.org/management-plans/herring> or <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Maria Fenton, Fishery Management Specialist, (978) 281-9196, [Maria.Fenton@noaa.gov](mailto:Maria.Fenton@noaa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) appear at 50 CFR part 648, subpart K. The herring fishery is managed using annual catch limits (ACL) and Management Area sub-ACLs, possession limits, gear restrictions, and

seasonal sub-ACL periods. In-season accountability measures (AM), including possession limit reductions and fishery closures, help ensure catch does not exceed the ACL or sub-ACLs. Reactive AMs require that when total catch exceeds an ACL or sub-ACL, the amount of the overage is deducted from the applicable sub-ACL and ACL in a subsequent fishing year.

The Northeast Fisheries Science Center (NEFSC) completed the most recent Management Track Assessment of the Atlantic herring stock in June 2020. The draft assessment summary report is available on the NEFSC website ([https://apps-nefsc.fisheries.noaa.gov/saw/sasi/sasi\\_report\\_options.php](https://apps-nefsc.fisheries.noaa.gov/saw/sasi/sasi_report_options.php)). The assessment indicated that the stock is not subject to overfishing, but is now overfished. This represents a change from the 2018 assessment, which indicated that the stock was not subject to overfishing and was approaching an overfished condition. The 2020 assessment also indicated that herring recruitment continues to be at historic low levels. Based on these findings, NMFS notified the New England Fishery Management Council in October 2020 that it must prepare and implement a new rebuilding plan for herring. The deadline to implement this rebuilding plan is October 13, 2022.

The Council developed Framework 9 to implement a herring rebuilding plan that would prevent overfishing and rebuild the stock, as required by section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action also includes adjustments to AM catch threshold triggers when catch exceeds a herring ACL or sub-ACL, and revisions to clarify existing regulations. The Council submitted the amendment and draft Environmental Assessment (EA) to NMFS for review on November 10, 2021. The Council reviewed the proposed regulations in this proposed rule, as drafted by NMFS, and deemed them to be necessary and appropriate, as specified in section 303(c) of the MSA.

### **Proposed Measures**

Under the MSA, NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. The MSA requires NMFS to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the FMP, plan amendment, the MSA and its National Standards, and other applicable law. NMFS is proposing and seeking comment on the proposed measures in Framework 9, as recommended by the Council.

### *1. Herring Rebuilding Plan*

When a stock is determined to be overfished, section 304(e)(3) of the MSA requires the appropriate Council to prepare and implement a fishery management plan, plan amendment, or proposed regulations to end overfishing immediately in the fishery and to rebuild the affected stock. Section 304(e)(4) of the MSA requires that the rebuilding plan shall be as short as possible, taking into account the status and biology of any overfished stocks, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem. The rebuilding plan must rebuild the stock within 10 years.

The Council considered a range of rebuilding plan alternatives during the development of Framework 9: No rebuilding plan (Alternative 1); a rebuilding plan that would set fishing mortality targets according to the Council's acceptable biological catch (ABC) control rule (Alternative 2); and a rebuilding plan that would set fishing mortality targets based on a constant fishing mortality rate (F) (Alternative 3) (Table 1). Alternative 2 reflects the Council's harvest policy for herring, and Alternative 3 was intended to mitigate negative socioeconomic impacts while the stock rebuilds. The Council also considered but rejected Alternative 3A, which would set fishing mortality targets based on a constant mortality rate that was lower than the constant rate in Alternative 3. Alternative 3A was intended to provide the Council with an alternative that would provide higher

2023 catch limits than Alternative 2 in order to support the fishery and its accompanying infrastructure, but a more conservative F than Alternatives 2 or 3 for the duration of the rebuilding period in recognition of recent low recruitment. The Council ultimately selected Alternative 2, which would continue the ABC control rule currently used in setting herring specifications. The rationale for the Council's decision is provided below.

**Table 1 -- Summary of Rebuilding Alternatives in Framework 9.**

Rebuilding Alternatives	Fishing Mortality Rate (F)	Rebuilding Period
No Action ( <i>Alternative 1</i> )	Biomass-Based (0.09 to 0.43)	None
Alternative 2 ( <i>ABC control rule</i> )	Biomass-Based (0.09 to 0.43)	5 years
Alternative 3	Constant (0.48)	7 years

Consistent with the 2020 assessment, each rebuilding alternative assumes that future herring recruitment will resemble long-term average recruitment. Projections indicate that the herring stock can rebuild in the shortest amount of time under Alternative 2 (5 years; by fishing year 2026). Because recent recruitment has been historically low, the Herring Plan Development Team (PDT) explored rebuilding sensitivity analyses assuming a conservative recruitment estimate. Projections using the conservative recruitment estimate extend the rebuilding period under Alternative 2 (from 5 years to 9 years) and lower F under Alternative 3 (from 0.48 to 0.36) to rebuild the stock in 7 years. Because Alternative 3A was added for consideration late in the development of Framework 9 and ultimately rejected, sensitivity analyses were not prepared for this alternative.

By continuing the use of the current ABC control rule under Alternative 2, this action would generate ABCs consistent with specific criteria identified by the Council, including low variation in yield, low probability of the stock becoming overfished, low probability of a fishery shutdown, and catch limits set at a relatively high proportion of

maximum sustainable yield (MSY). During the development of the ABC control rule in Amendment 8, the Council discussed how to proceed with applying the rule if the herring stock became overfished. Amendment 8 provides that if the  $F$  derived from the ABC control rule is sufficient to meet rebuilding requirements, then the ABC control rule should be adhered to under a rebuilding plan. Additionally, recent low recruitment suggests that the long-term average recruitment assumption used to generate biomass projections may not reflect the current reality of the stock. Therefore, while projections suggest that there are not substantial differences in the overall performance of each alternative under consideration, the Council supported being more risk-averse in the current situation where herring biomass is estimated to be very low. Because of these reasons, the Council recommended implementing a rebuilding plan that would set ABCs consistent with the existing ABC control rule. This rulemaking proposes the Council's recommendations.

Under the ABC control rule, when biomass ( $B$ ) is at or above 50 percent of the biomass that can support harvest of the maximum sustainable yield ( $B_{MSY}$ ) or its proxy, ABC is the catch associated with an  $F$  of 80 percent of  $F_{MSY}$  or its proxy. When biomass falls below 50 percent of  $B_{MSY}$  or its proxy,  $F$  declines linearly to 0 at 10 percent of  $B_{MSY}$  or its proxy. Under the proposed rebuilding plan,  $F$  would range from a low of 0.08 (fishing year 2023) to a high of 0.43 (fishing year 2026) based on current stock biomass projections. The ABC control rule allows for a maximum  $F$  of 0.43 because 0.43 is 80 percent of the current estimate of  $F_{MSY}$  (0.54).

The proposed rebuilding plan is expected to result in short-term negative impacts to the herring fishery due to low catch limits during the first several years of the rebuilding period. However, the long-term benefits of rebuilding the herring stock as quickly as possible and stabilizing the fishery are expected to outweigh these short-term economic costs. The proposed rebuilding plan would not result in any changes to the fishing year

2022 ABC, so the specifications that the fishery is currently operating under would not be disrupted. Additionally, other industries that rely on herring predators also need to be considered when examining the socioeconomic impacts of the rebuilding plan. The ABC control rule explicitly accounts for herring as forage in the ecosystem by limiting  $F$  to 80 percent of  $F_{MSY}$  when biomass is high and setting it at 0 when biomass is low.

## *2. Adjustments to Accountability Measure Catch Threshold Triggers*

The Council recommended adjustments to the AM catch threshold triggers when a herring ACL or Management Area sub-ACL is exceeded. Currently, herring regulations at § 648.201(a)(3) require that if NMFS determines that total catch exceeded the ACL or a sub-ACL in a given fishing year, we will subtract the amount of the overage from the ACL and respective sub-ACL in the fishing year following total catch determination.

Framework 9 proposes adjusting the AM catch threshold triggers so that an overage of a sub-ACL in one fishing year would only be deducted in a subsequent fishing year if the overage exceeded 10 percent of the sub-ACL; and/or if the ACL was also exceeded. Additionally, if a sub-ACL was exceeded by more than 10 percent and the ACL was not also exceeded, only the portion of the sub-ACL overage above 10 percent would be deducted from the appropriate sub-ACL in a subsequent fishing year.

Under these proposed regulations, the following overage scenarios would be possible:

- If catch exceeds a sub-ACL by 10 percent or less but does not exceed the ACL in a given fishing year, then NMFS would not deduct any amount of the overage from the applicable sub-ACL or ACL in the fishing year following total catch determination.
- If catch exceeds a sub-ACL by more than 10 percent but does not exceed the ACL in a given fishing year, then NMFS would subtract the amount of the overage above 10 percent from the applicable sub-ACL and ACL in the fishing year

following total catch determination. For example, if catch exceeded the Area 1A sub-ACL by 15 percent in a given fishing year and the ACL was not exceeded, the amount equal to the 5 percent overage would be deducted from the ACL and Area 1A sub-ACL in the fishing year following total catch determination.

- If catch exceeds a sub-ACL by any amount and also exceeds the ACL in a given fishing year, then NMFS would subtract the full amount of the sub-ACL overage from the applicable sub-ACL, and the full amount of the ACL overage from the ACL, in the fishing year following total catch determination. For example, if catch exceeded the Area 1A sub-ACL by 15 percent and the ACL by 5 percent in a given fishing year, the amount equal to the 15-percent overage would be deducted from the Area 1A sub-ACL and the amount equal to the 5-percent overage would be deducted from the ACL in the fishing year following total catch determination.
- If catch exceeds the ACL but does not exceed any sub-ACLs were exceeded in a given fishing year, then NMFS would subtract the full amount of the overage from the ACL in the fishing year following total catch determination. For example, if catch exceeded the herring ACL by 2 percent in a given fishing year and no sub-ACLs were exceeded, the amount equal to the 2-percent overage would be deducted from the ACL only in the fishing year following total catch determination.

These proposed adjustments to the AM catch threshold triggers are intended to increase access to harvest and help offset the negative economic impacts of relatively small sub-ACL overages, which could occur given recent low catch limits and the high volume nature of the herring fishery. They are not expected to adversely affect the stock or the fishery management plan's area management program, while still preventing overharvesting of any individual stock components.

### *3. Revisions and Clarifications to Existing Regulations*

This proposed rule includes additional revisions to address regulatory text that is unnecessary, outdated, or unclear. These revisions were not adopted by the Council under Framework 9 but are being implemented consistent with section 305(d) of the MSA, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the MSA. The revisions at § 648.13(f)(1)(ii)(B), (f)(2), (f)(5), and (f)(6) clarify that vessels are not allowed to catch or transfer at sea more than 40,000 lb (18,143.7 kg) of herring per trip or calendar day if the vessel is in, or the fish were harvested from, a management area subject to a 40,000-lb (18,143.7 kg) herring possession limit. The revisions at § 648.14(r)(1)(ii)(B) clarify that it is unlawful for any person to land or attempt to land more than the possession limits specified at § 648.201(a) from a management area subject to a possession limit adjustment or fishery closure. The addition of paragraph § 648.14(r)(1)(iv)(F) clarifies that it is unlawful for any person to purchase, receive, possess, have custody of, sell, barter, trade or transfer more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring, or attempt to do any of these things, from a management area subject to a herring possession limit pursuant to § 648.201(a). The revisions at § 648.14(r)(1)(vii)(A) clarify that vessels may not transit or be in a management area subject to a possession limit adjustment or fishery closure with more than the applicable herring possession limit, unless such herring were caught in an area not subject to the possession limit, all fishing gear is stowed and not available for immediate use, and the vessel is issued the appropriate herring permit. The revision at § 648.201(a)(1)(i) changes the paragraph heading from “Management area closure” to “Possession limit adjustments.” The revisions at § 648.201(a)(1)(i)(A), (a)(2)(i)(B)(1), (a)(1)(i)(B)(2), (a)(1)(ii), (a)(2), and (a)(4)(ii) update possession limit adjustment language to be consistent with § 648.201(a)(1)(i), and clarify that vessels may not fish for, possess,

transfer, receive, land, or sell more than the applicable possession limits described in those paragraphs, or attempt to do any of these things. The revisions at § 648.201(b) and (c) correct typos by changing “less than” to “greater than.” The revisions at § 648.201(g)(1) update the language used in the carryover example to clarify the timing of when carryover is applied and how it is calculated. The final revision removes paragraph § 648.201(g)(2) because the carryover provisions contained within only applied to fishing years 2021 and 2022 and are therefore no longer necessary. The Council concurs with these revisions.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed action is consistent with the Atlantic Herring FMP, provisions of the MSA, and other applicable law, subject to further consideration after public comment.

This proposed action has been preliminarily determined to be not significant for purposes of Executive Order (E.O.) 12866.

This proposed action does not contain policies with federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed action, if adopted, would not have a significant economic impact on a substantial number of small entities. More information on this determination is provided below.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with an environmental assessment. This proposed action would affect all vessels with permits to fish in the herring fishery; therefore, the direct regulated entity is a firm that controls at least one herring permit. In 2020, there were 9 large and 1,213 small firms that met this criteria. A firm was included if it owned at least one category A, B, C, D, or E Herring Permit on July 1, 2021. The nine large

firms earned a combined \$189 million in fishing revenue (an average of about \$21 million per large firm) over the trailing 3 years. About \$2 million of that revenue (an average of about \$225,000 per large firm) was derived from herring. The 1,213 small entities earned a combined \$655 million in fishing revenue (an average of about \$540,000 per small firm). About \$11 million of that revenue (an average of about \$9,000 per small firm) was derived from herring.

Many of the direct regulated entities described above hold an open access category D herring permit and no other herring permit. Impacts of the proposed rule are likely to be largest for the participants holding at least one category A, B, C, or E herring permit. In 2020, there were 6 large and 97 small firms that met this criteria. The six large entities earned a combined \$129 million in fishing revenue (an average of about \$21.5 million per large firm) over the trailing 3 years. About \$2 million of that revenue (an average of about \$333,000 per large firm) was derived from herring. The 97 small entities earned a combined \$131 million in fishing revenue (an average of about \$1.4 million per small firm). About \$11 million of that revenue (an average of about \$111,000 per small firm) was derived from herring.

Some of the firms described in the previous section are not active in the herring fishery, despite holding a category A, B, C, or E herring permit. For the purposes of this analysis, “active” is defined as deriving any revenue from herring in 2020. The measures proposed in this action are likely have the largest impact on vessels that are active in the herring fishery. In 2020, there were 2 large and 29 small entities that meet these criteria. The 29 active small entities earned a combined \$31.99 million in fishing revenue (an average of about \$1.18 million per active small firm). About \$10.65 million of that revenue (an average of about \$394,000 per active small firm) was derived from herring.

Analyses indicate that, relative to the baseline, the economic impacts to both small and large firms resulting from the proposed measures are expected to be positive.

Under the proposed rule, gross receipts are expected to increase by \$26,000 for large firms (an average of about \$2,900 per firm) and \$134,000 for small firms (an average of about \$110 per firm). Most of the additional revenue that is expected to result from the implementation of the proposed rule would accrue to small firms; however, the increase in gross receipts from fishing is quite small in magnitude. NMFS assumes that additional revenue would be distributed across firms in such a way that the gross receipts of the inactive firms would not increase.

Because this action would either continue the use of the existing ABC control rule for specification-setting practices or allow for a slight increase in fishing opportunities and revenues, in combination with adjustments to AM catch threshold triggers, this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new information collection requirements, including reporting or recordkeeping requirements, contained in this action.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 24, 2022.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

#### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.13, revise paragraphs (f)(1)(ii)(B), (f)(2)(ii), and (f)(5) and (6) to read as follows:

**§ 648.13 Transfers at sea.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) Provided that the transfer of herring at sea to another vessel for personal use as bait does not exceed the possession limit specified for the transferring vessel in § 648.204, except that no more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring may be caught or transferred per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

(2) \* \* \*

(ii) A vessel issued an Atlantic herring permit may transfer herring at sea to an Atlantic herring carrier up to the applicable possession limits specified in § 648.204, provided it is issued a letter of authorization for the transfer of herring and that no more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring may be caught or transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, an area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

\* \* \* \* \*

(5) *Transfer to at-sea processors.* A vessel issued an Atlantic herring permit may transfer herring to a vessel issued an at-sea processing permit specified in § 648.6(a)(2)(ii), up to the applicable possession limit specified in § 648.204, except that no more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring may be caught or

transferred at sea per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

(6) *Transfers between herring vessels.* A vessel issued a valid Atlantic herring permit may transfer and receive herring at sea, provided such vessel has been issued a letter of authorization from the Regional Administrator to transfer or receive herring at sea. Such vessel may not transfer, receive, or possess at sea, or land per trip herring in excess of the applicable possession limits specified in § 648.204, except that no more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring may be caught, transferred, received, or possessed at sea, or landed per trip or per calendar day if the vessel is in, or the fish were harvested from, a management area subject to a possession limit adjustment or fishery closure as specified in § 648.201.

\* \* \* \* \*

3. In § 648.14:

- a. Revise paragraph (r)(1)(ii)(B);
- b. Add paragraph (r)(1)(iv)(F); and
- c. Revise paragraph (r)(1)(vii)(A).

The revisions and addition read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(r) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) Attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell, more than the possession limits specified at § 648.201(a) from a management area subject to a possession limit adjustment or fishery closure, or from a river herring and

shad catch cap closure area that has been closed to specified gear pursuant to § 648.201(a)(4)(ii), if the vessel has been issued and holds a valid herring permit.

\* \* \* \* \*

(iv) \* \* \*

(F) Purchase, receive, possess, have custody or control of, sell, barter, trade or transfer, or attempt to purchase, receive, possess, have custody or control of, sell, barter, trade or transfer, more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring from a management area subject to a possession limit for Atlantic herring pursuant to § 648.201(a).

\* \* \* \* \*

(vii) \* \* \*

(A) Transit or be in an area subject to a possession limit adjustment or fishery closure pursuant to § 648.201(a) with more than 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) of herring, unless such herring were caught in an area not subject to the 2,000 lb (907.2 kg) or 40,000 lb (18,143.7 kg) limit specified in § 648.201(a), all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a permit appropriate to the amount of herring on board and the area where the herring was harvested.

\* \* \* \* \*

4. In § 648.201:

- a. Revise the paragraphs (a)(1)(i) heading
- b. Revise paragraphs (a)(1)(i)(A), (a)(1)(i)(B)(*I*) and (2), (a)(1)(ii), and (a)(2) and (3);
- c. Revise paragraphs (a)(4)(ii), (b), (c), and (g)(1); and
- d. Remove and reserve paragraph (g)(2).

The revisions read as follows:

**§ 648.201 AMs and harvest controls.**

(a) \* \* \*

(1) \* \* \*

(i) *Possession Limit Adjustments—(A) Areas 1A and 1B Possession Limit*

*Adjustment.* If NMFS projects that catch from Area 1A or 1B will reach 92 percent of the annual sub-ACL allocated to Area 1A or Area 1B, before the end of the fishing year, or 92 percent of the Area 1A sub-ACL allocated to the seasonal period as set forth in paragraph (d) of this section, beginning the date the catch is projected to reach 92 percent of the sub-ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip in or from the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(B) \* \* \*

(1) *Possession Limit Adjustment - Phase 1.* If NMFS projects that catch from

Area 2 or Area 3 will reach 90 percent of the annual sub-ACL allocated to Area 2 or Area 3 before the end of the fishing year, beginning the date the catch is projected to reach 90 percent of the applicable sub-ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 40,000 lb (18,143.7 kg) of Atlantic herring per trip in or from the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(2) *Possession Limit Adjustment - Phase 2.* If NMFS projects that catch will reach

98 percent of the annual sub-ACL allocated to Area 2 or Area 3 before the end of the fishing year, beginning the date the catch is projected to reach 98 percent of the sub-ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer,

receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip in the applicable area, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(ii) *Herring fishery closure.* If NMFS projects that catch will reach 95 percent of the ACL before the end of the fishing year, beginning the date the catch is projected to reach 95 percent of the ACL, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip in all herring management areas, and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(2) When the Regional Administrator has determined that the GOM and/or GB incidental catch cap for haddock in § 648.90(a)(4)(iii)(D) has been caught, no vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in the applicable Accountability Measure (AM) Area, *i.e.*, the Herring GOM Haddock AM Area or Herring GB Haddock AM Area, as defined in § 648.86(a)(3)(ii)(A)(2) and (3), may fish for, possess, transfer, receive, land, or sell herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, and from landing herring more than once per calendar day, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel's gear is not available for immediate use as defined in § 648.2 while transiting the applicable AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) in the applicable AM area for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued a Category A or B Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with

§ 648.10(g)) Northeast multispecies trip.

(3) *ACL and sub-ACL overage deductions.* (i) If NMFS determines that total catch exceeded an Atlantic herring sub-ACL by 10 percent or less and the ACL was not exceeded in a given fishing year, then NMFS shall not deduct any amount of the overage from the applicable sub-ACL or ACL in the fishing year following total catch determination.

(ii) If NMFS determines that total catch exceeded an Atlantic herring sub-ACL by greater than 10 percent and the ACL was not exceeded in a given fishing year, then NMFS shall subtract the amount of the overage above 10 percent from the ACL and applicable sub-ACL in the fishing year following total catch determination. For example, if catch exceeded the Area 1A sub-ACL by 15 percent in Year 1 and the ACL was not exceeded, the amount equal to the 5 percent overage would be deducted from the ACL and Area 1A sub-ACL in Year 3.

(iii) If NMFS determines that total catch exceeded an Atlantic herring sub-ACL by any amount and the ACL was also exceeded in a given fishing year, then NMFS shall subtract the full amount of the sub-ACL overage from the applicable sub-ACL, and the full amount of the ACL overage from the ACL, in the fishing year following total catch determination. For example, if catch exceeded the Area 1A sub-ACL by 15 percent and the ACL by 5 percent in Year 1, the amount equal to the 15-percent overage would be deducted from the Area 1A sub-ACL and the amount equal to the 5-percent overage would be deducted from the ACL in Year 3.

(iv) If NMFS determines that total catch exceeded the Atlantic herring ACL and no herring sub-ACLs were exceeded in a given fishing year, then NMFS shall subtract the full amount of the overage from the ACL in the fishing year following total catch determination. For example, if catch exceeded the herring ACL by 2 percent in Year 1, the amount equal to the 2-percent overage would be deducted from the ACL in Year 3,

and no sub-ACLs would be reduced.

(v) NMFS shall make overage determinations and implement any changes to ACLs or sub-ACLs, through notification in the Federal Register, and if possible, prior to the start of the fishing year during which the reduction would occur.

(4) \* \* \*

(ii) Beginning on the date that NMFS projects that river herring and shad catch will reach 95 percent of a catch cap for specified gear applicable to an area specified in § 648.200(f)(7) for the remainder of the fishing year, vessels may not attempt or do any of the following: Fish for, possess, transfer, receive, land, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip using the applicable gear in the applicable catch cap closure area, specified in § 648.200(f)(8), and from landing herring more than once per calendar day, except as provided in paragraphs (b) and (c) of this section. NMFS shall implement these restrictions in accordance with the APA.

(b) A vessel may transit an area that is limited to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section with greater than 2,000 lb (907.2 kg) or greater than 40,000 lb (18,143.7 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section, and that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

(c) A vessel may land an area that is limited to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section with greater than 2,000 lb (907.2 kg) or greater than 40,000 lb (18,143.7 kg) of herring on board, provided such herring were caught in an area or areas not subject to the 2,000-lb (907.2-kg) limit or 40,000-lb (18,143.7-kg) limit specified in paragraph (a) of this section, and that all

fishing gear is stowed and not available for immediate use as defined in § 648.2, and provided the vessel is issued a vessel permit appropriate to the amount of herring on board and the area where the herring was harvested.

\* \* \* \* \*

(g) \* \* \*

(1) Subject to the conditions described in this paragraph (g), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from Year 1 during Year 2, and will add carryover to the applicable sub-ACL(s) in Year 3. All such carryover shall be based on the herring management area's initial sub-ACL allocation for Year 1, not the sub-ACL for Year 1 as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring caught from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 100 mt of herring is added as carryover from Year 1 to a 5,000 mt sub-ACL in Year 3, catch in that management area would be tracked against a total sub-ACL of 5,100 mt. NMFS shall add sub-ACL carryover only if catch does not exceed the Year 1 ACL, specified consistent with § 648.200(b)(3). The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (g).

\* \* \* \* \*